

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3872 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
(No. 1 to 5 NO)

MADHUBHAI BHIKHABHAI MITNA

Versus

TAX RECOVERY OFFICER

Appearance:

MRS. MANISHA LAVKUMAR, Ld. counsel, WITH
MR ISHVERLAL J NAIK for Petitioner
MR MIHIR JOSHI, LD. COUNSEL for Respondent No. 1, 2
For M.R. Bhatt & Co.

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/12/97

ORAL JUDGEMENT

Per: R.K. Abnichandani, J :-

Rule. Ld. counsel Mr. Mihir Joshi for M/s.

M.R. Bhatt & Co. waives service of rule.

At the instance of both the sides, the matter is being finally disposed of. The Petitioner challenges the Sale Proclamation dated 4th February, 1997 and also the sale of petitioner's property in question held on 25th March 1997, as per the advertisement published on 12th March 1997, and seeks a direction on the respondents from selling the property of the petitioner, without issuing a Valid Proclamation of Sale, as provided by the Income Tax Act and the Rules.

The Notice For Settlement Of Sale Proclamation was issued on 4th February, 1997, informing the petitioner that '(blank) day of March 1997' was fixed for drawing up the proclamation of sale and settling the terms thereof. However, before that could be done, on 4th February 1997 itself, it was declared that the sale of the property in question will take place on 25th March 1997.

Similar situation had arisen before this Court in Special Civil Application No. 2381 of 1997, and the Division Bench vide its order dated March 21, 1997, held that the proclamation in that case issued on 12-3-1997 could not be allowed to be operated, and the properties of petitioner could not be allowed to be auctioned in pursuance of the notice dated 12-3-1997. It was made clear in that case that, the authorities were free to proceed in accordance with law, after settling the proclamation in pursuance of the notice issued to the petitioner. There, the date for fixation of terms and conditions of the proclamation was fixed as 31st March 1997.

In the instant case, it could be seen from the Notice for Settlement of Proclamation dated 4th February 1997 that, the exact date fixed for settlement was not mentioned and it was only said that '(blank) day of March 1997' was fixed for drawing up the proclamation of sale and settling the terms thereof. Therefore, the petitioner would have been justified in waiting till the end of March 1997. By another Notice, simultaneously issued on 4th February 1997, the sale was sought to be held on 25th March 1997. This could not have been done without allowing the notice dated 4th February 1997, for settlement of terms and conditions of sale proclamation to fully operate. Under these circumstances, the Sale Proclamation dated 4th February 1997 which did not specify the exact date fixed for Settlement of Sale Proclamation and the Auction of the petitioner's property

held on 25th March 1997 cannot be sustained and are hereby set aside, with a liberty to the authorities to proceed in accordance with law, after settling the proclamation by issuing a fresh notice for settlement of terms and conditions of sale proclamation. Rule is made absolute accordingly, with no order as to costs.

/vgn.